

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

P.C.,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA  
CLARA COUNTY,

Respondent;

SANTA CLARA COUNTY  
DEPARTMENT OF FAMILY AND  
CHILDREN'S SERVICES,

Real Party in Interest.

H038327

(Santa Clara County  
Super. Ct. No. JD20237)

P.C. (daughter) was removed from the custody of petitioner, Doctor P.C. (mother) and declared a dependent child of the court due to concerns about mother's mental health and the effect of mother's behavior on daughter's well-being. After 18 months in care, daughter was thriving in a prospective adoptive home. Mother had made no substantive progress in court-ordered therapy. At the 18-month review hearing the juvenile court accepted the recommendation of the Santa Clara County Department of Family and Children's Services (Department) to terminate reunification services (Welf. & Inst. Code, § 366.22, subd. (a))<sup>1</sup> and set a selection and implementation hearing pursuant to section 366.26. Mother petitions for a writ of mandate directing the juvenile court to vacate that

---

<sup>1</sup> Hereafter all statutory references are to the Welfare and Institutions Code.

order. Mother argues that there is no substantial evidence to support a finding that returning daughter to her custody would pose a substantial risk of detriment to the child. Department maintains that the evidence is sufficient to support the finding. We agree with Department. Accordingly, we deny the petition.

## **I. BACKGROUND**

Mother and daughter first came to the attention of Department in 2008, when daughter was eight years old. Department received a referral alleging that mother was emotionally abusing daughter by seeking excessive medical care for her. Mother claimed the referral was retaliation for her having complained about one of the doctors.

In 2009, Buncombe County (North Carolina) Department of Social Services received a report that daughter was being given psychotropic medication she did not need. That referral was concluded without intervention but the agency received another referral in January 2010. This time the allegation was that mother was exposing daughter to medical testing she did not need. Cynthia Brown, M.D., a North Carolina physician, assessed daughter at the request of the agency. Brown's evaluation was that mother had been seriously neglecting daughter, subjecting her to "excessive and unnecessary medical visits, procedures, testing, medication use, restriction of her diet, restriction of her activities and instability of her home life from the frequent moves they have made. [Daughter] has been harmed by this in that she believes that she has an abnormal brain, balance and memory problems . . . ." A previous evaluation "raised concerns for depression and somatization. [Daughter's] behaviors are reportedly worsening at school." Mother had not been giving daughter recommended medication and had not complied with recommended counseling. Brown opined, "Continuing to live in this situation places [daughter] at high risk of developing mental health disorders such as anxiety, somatization disorders and/or factitious disorder, and again, I am very concerned that these may already be present to some degree. It is my hope that intervention can be done to help this family and to protect [daughter] from ongoing neglect/abuse."

The Buncombe County agency opened an informal case and provided services to the family, recommending a psychological evaluation for mother (who is a licensed psychologist herself) and services to address daughter's stress. The agency also recommended that mother identify and utilize one primary care doctor to coordinate daughter's health care. Mother refused to acknowledge that she might have a mental health problem and did not cooperate with the other recommendations. Before the case was resolved mother and daughter moved away. On May 17, 2010, the Buncombe County agency alerted Department that mother may have moved to Santa Clara County where mother's parents lived. Mother had refused to share her new address with the North Carolina agency because she felt it was harassing her.

In response to the notice from the North Carolina agency, Department began investigating in June 2010. Mother refused to cooperate. She refused to consent to Department's accessing daughter's medical records. She claimed Department was harassing her. And for the next month Department personnel were unable to contact her. Consequently, on July 21, 2010, the juvenile court issued a protective custody warrant and daughter was taken into custody. The father's rights had been terminated previously and, according to mother, his whereabouts were unknown. Daughter was placed with her maternal aunt.

Department filed a petition under section 300, subdivisions (b) and (c), alleging that daughter came within the jurisdiction of the juvenile court. For the preceding several years mother had been subjecting daughter to an excessive number of unnecessary medical visits, procedures, testing, and medications. The social worker described daughter as appearing "thin, lethargic, with baggy eyes." She lacked basic self-help skills. She could not bathe herself, sleep independently, or ride a bicycle. It was believed that the deficits were the result of lack of exposure to the tasks; daughter did not have any cognitive deficits that would prevent her from acquiring the skills. Mother continued to refuse consent for Department to access daughter's medical records. Mother's

communication was consistently described as weird, unorganized, or spacey. Daughter was diagnosed with anxiety disorder. She was physically healthy. The juvenile court sustained the petition.

Over the next 12 months, mother had regular, supervised visits with daughter but was unable to restrain herself from discussing health, diet, and hygiene issues with the girl. She contacted caregivers directly and showed up one day to remove daughter from school due to her fear of a gas line exploding. She objected to daughter's participating in extracurricular activities or overnight camping trips.

Daughter thrived in the home of her maternal aunt but her family members were not willing to adopt her due to their concern about mother's behavior. Daughter was later placed in a confidential foster home with a family that indicated a willingness to adopt if reunification efforts failed. Daughter continued to do well and continued to have supervised visits with mother.

The 18-month review hearing was held over three days beginning April 30, 2012. In its report for the hearing Department requested that the court terminate services to mother and set a section 366.26 selection and implementation hearing. Department reported that daughter had been residing in the concurrent foster home since June 18, 2011. Daughter had no medical, dental, or developmental problems. She was developing age-appropriate social interests, social skills, and self-confidence. She loved school, maintained good friendships, and was athletic and energetic. She played soccer and basketball. School authorities reported daughter to be friendly and engaged with peers and teachers.

Notwithstanding reports of daughter's well-being, mother had continued to exhibit excessive concern about daughter's health and appearance. In October 2011, mother telephoned the social worker claiming that daughter needed to see an eye doctor. Mother made a doctor's appointment for daughter without consulting the social worker or the foster parent. The foster mother reported no complaints from daughter about her eyes

and a subsequent visit to the eye doctor revealed that daughter's eyes were healthy and her vision was good. Mother repeatedly expressed concern that daughter had reported being bullied but school authorities had no reports of bullying. Mother objected to allowing daughter to attend an overnight Girl Scout camp but the juvenile court approved the excursion. Upon learning of the approval, mother contacted the Girl Scouts, explaining that because of the weather, forest fires, daughter's immaturity, and her "physical malaise when [at] high altitude when in the cold" mother did not want daughter to go on the outing. Mother was also concerned that the school was not good for daughter. Mother had attended Palo Alto schools and knew how competitive they were. Mother maintained that if she were to move out of the country she would put daughter in a private school.

Mother participated in individual therapy but stopped seeing her therapist in January 2012. According to the therapist, mother did not think she needed individual therapy but the therapist could not confirm that mother had achieved her therapeutic goals. Mother participated in family therapy beginning in October 2011 but two months later reported that she was uncomfortable with the therapist and did not think family therapy was working. Mother continued to blame the system and criticize the professionals involved. Department did not pursue further therapeutic interventions. The social worker had become concerned about mother's mental health and the risk that she would kidnap daughter. In January 2102, on account of these concerns, Department moved visitation, which had always been supervised, from the maternal grandparents' home back to Department offices.

William Alvarez, Ph.D., evaluated mother to determine if there was a substantial risk of detriment to daughter if she were returned to mother's custody. In a report dated January 2012, Alvarez noted his concern that mother had "not yet acknowledged or addressed the nature or source of her ongoing concerns regarding perceived medical conditions and/or threats to [daughter's] safety." Mother had come to the attention of

Department as the result of “concerns raised by multiple medical providers regarding the possibility of Munchausen Syndrome by Proxy. [¶] Specifically, [mother] sought multiple care providers and medical tests in relation to many medical and psychological concerns regarding her daughter (ie: cancer, tumor, bipolar disorder, Fragile X, multiple sclerosis, endocrine disorder, Cushing’s disease, sepsis, Adrenoleukodystrophy, rheumatologic disease, early puberty, clumsiness, etc.). In sum, it was reported that at minimum [daughter] had undergone 28 different tests or studies (ie: MRI and CT scans) and that [mother] had raised at least 34 different diseases/conditions that [daughter] may suffer from. . . .” Alvarez did not believe mother suffered from Munchausen Syndrome by Proxy but he did believe that she had emotional and cognitive difficulties “which are currently interfering with her ability to function to the best of her abilities as a parent.” Mother responded to the evaluation with her own 16-page (single spaced) critique, charging Alvarez with incompetence and attempting to justify the multiple tests daughter had previously undergone.

Alvarez testified at the 18-month review hearing. He referred to mother’s letter to him as demonstrating her continuing refusal to accept any responsibility for the dependency and her continued preoccupation with daughter’s health. She exhibited flight of ideas, which is associated with mental illness. A priority for mother would be ongoing mental health treatment, but Alvarez believed that mother was not then capable of staying in therapy. The risk to daughter if she were returned to mother’s care could be mitigated in one of two ways. One would be for mother to become involved in therapy and become emotionally stable. The other would be for daughter to mature and develop enough assertiveness that she could resist mother’s inappropriate attentions. Neither point had been reached yet.

The social worker testified that mother had not expressed an understanding of why daughter had been removed from her care. Her excessive concern about daughter’s health continued unabated. Kidnapping remained a concern. Mother had mentioned

seeking work in Australia and she told daughter that she would put her in private school there. Daughter had begun to realize that mother worried too much about daughter's health. She loved mother and was happy in her foster home. She hoped mother would get treatment so that daughter could live with her again. The social worker believed that if daughter were returned to mother's care, mother would continue the behaviors of the past and daughter would be at high risk for her own mental health problems.

Mother also testified at the hearing. When asked if she understood why daughter was in care mother replied, "[I]t's a very complex issue." She did understand that one of the major concerns was that she took daughter to the doctor too much. She did not think Department knew daughter well enough to be able to see how she was doing. She was daughter's "genetic, biological and super parent mother." Mother said that the last time she saw the social worker the meeting was cut short because the worker was upset over the death of Kim Jong-il. Mother denied planning to kidnap daughter. She was aware that a pediatrician would be responsible for coordinating daughter's health care and did not expect daughter would need to see other doctors.

The trial court found that returning daughter to mother's custody would create a substantial risk of detriment to the physical or emotional well-being of daughter, citing mother's failure to achieve her therapeutic goals and her refusal to acknowledge her role in the dependency. The court set a selection and implementation hearing pursuant to section 366.26 for August 28, 2012. Mother challenges the order by way of petition for writ of mandate. (§ 366.26, subd. (I); Cal. Rules of Court, rule 8.450 et seq.)

## **II. DISCUSSION**

### **A. *Issue and Standard of Review***

Mother, who appears in propria persona after having been represented by counsel below, argues that return of daughter to her custody would not pose a substantial risk of detriment to daughter. The argument implicitly challenges the sufficiency of the evidence to support the juvenile court's finding.

The pertinent law is well-settled. “When a child is removed from parental custody, certain legal safeguards are applied to prevent unwarranted or arbitrary continuation of out-of-home placement. [Citations.] Until reunification services are terminated, there is a statutory presumption that a dependent child will be returned to parental custody.” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400.) Following the 18-month review hearing, the juvenile court must order the child returned to the custody of his or her parent or legal guardian “unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.” (§ 366.22, subd. (a).) “In determining whether it would be detrimental to return the child at the 18-month review, the court must consider whether the parent participated regularly in any treatment program set forth by the plan, the ‘efforts or progress’ of the parent, and the ‘extent’ to which the parent ‘cooperated and availed himself or herself of services provided.’ (§ 366.22, subd. (a).)” (*Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1748.) “The [Department] has the burden of establishing detriment. [Citations.] . . . [T]he risk of detriment must be *substantial*, such that returning a child to parental custody represents some danger to the child’s physical or emotional well-being.” (*In re Yvonne W.*, *supra*, at p. 1400.)

This court reviews the record to determine whether substantial evidence supports the juvenile court’s finding that the child would be at substantial risk of detriment if returned to the parent’s custody. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705.) We examine the evidence in favor of the juvenile court’s order, and indulge in all reasonable inferences to support the findings of the court. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

#### *B. Analysis*

Daughter was detained because of mother’s unfounded concern with daughter’s health and other aspects of her well-being, which led mother to subject daughter to



excessive, unnecessary medical evaluations. Mother's behavior kept daughter out of school, limited her diet, caused daughter to be depressed and anxious, and led her to believe she suffered from various conditions, including brain damage. Accordingly, Department's plan for reunification required mother to engage in therapy to help her understand that her unsupported concerns about daughter were themselves detrimental to the child. Over the course of more than 18 months of services mother's understanding of the situation did not evolve. She continued to blame the system and insisted that she was the one who knew her daughter best. The social worker believed that daughter would be at risk for future mental health problems if returned to mother's care and mother persisted in the behaviors of the past. Dr. Alvarez opined that the risk of harm to daughter could be mitigated if mother were emotionally stable or daughter were sufficiently mature and assertive but he did not believe that mother was emotionally stable or that daughter was mature enough to deal with mother's instability. In effect, Alvarez's opinion was that if daughter were returned to mother's custody, mother would resume the same behavior that led to the dependency and daughter would be unable to resist the negative effect those behaviors had upon her. This is substantial evidence to support the juvenile court's finding that return to mother's custody would pose a substantial risk of detriment to daughter.

### **III. DISPOSITION**

The petition is denied.

Premo, Acting P.J.

WE CONCUR:

Bamattre-Manoukian, J.

Grover, J.\*

---

\* Judge of the Monterey County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.